

Office of Chief Counsel
Internal Revenue Service
memorandum

date: August 19, 2009

to: Manager, EO Technical guidance and Quality Assurance SE:T:EO:RA:G

from: Chief, Exempt Organizations Branch 1, CC:TEGE:EOEG:EO1

subject: Interpretation of “reinstatement” under IRC § 6033(j)(1) and group rulings

This is in response to the second issue posed in your memorandum dated January 6, 2009. You requested our concurrence to your interpretation that a central organization may not reinstate the revoked tax-exempt status of a subordinate organization by listing the revoked subordinate organization on the central organization’s annual Supplemental Group Ruling Information filing when revocation of the subordinate organization’s tax-exempt status occurs by operation of law under IRC § 6033(j)(1). We agree with your interpretation. We believe the language of section 6033(j)(1) and section 6033(j)(2) requires all organizations subject to section 6033(a)(1) or section 6033(i) to apply for reinstatement. No particular type of organization receives nor does any special procedure provide any advantage with respect to reinstatement.¹

Background

Rev. Proc. 80-27, 1980-1 C.B. 677, sets forth the procedures under which recognition of exemption may be obtained on a group basis.² See also, Treas. Reg. §601.201(n)(8). The IRS may recognize the tax-exempt status of a group of subordinate organizations affiliated with a central organization that exercises supervision and control over its subordinates. Under this procedure subordinate organizations are not required to file individual applications for recognition of their tax-exempt status. A central organization applying for a group exemption letter, however, must first obtain recognition of its own tax-exempt status.

The central organization holding the group exemption determines which subordinates are included under the group exemption. After the group exemption letter is granted, the central organization is responsible for (1) ensuring that subordinate organizations continue to qualify to be tax-exempt; (2) verifying that new subordinates are tax-exempt;

¹ To the extent that the statute contemplates any advantages, those are left to section 6033(j)(3) which provides retroactive reinstatement upon showing to the satisfaction of the Secretary evidence of reasonable cause for the failure described in section 6033(j)(1).

² Rev. Proc. 2009-9, 2009-2 IRB (January 12, 2009) 258-9.

and (3) updating the IRS annually of new subordinates, subordinates no longer to be included, and subordinates that have changed their names or addresses. Updated information regarding subordinates under a group exemption is provided by filing an annual Supplemental Group Ruling Information filing.

Rev. Proc. 80-27, supra., conditions continued effectiveness of a group exemption as to a particular subordinate upon the “annual filing of an information return for the subordinate if one is required of it under section 6033 of the Code.” Sec. 7.02, Rev. Proc. 80-27, 1980-1 C.B. 677. If required to file an information return, the central organization must file a return, but it also may file a group return on behalf of some or all of its subordinates. If a central organization files a group return it must attach a list of the subordinates included in the return. Treas. Reg. §1.6033(d). Subordinates not included on the list are required to file their own information return under section 6033(a)(1) or submit an annual electronic notice under section 6033(i)(1).

If an organization that is required to file a return or submit an electronic notice fails to do so for three consecutive years, section 6033(j)(1) states that “such organization's status as an organization exempt from tax under section 501(a) shall be considered revoked on and after the date set by the Secretary for the filing of the third annual return or notice.”

The statutory language provides no exceptions for an organization based upon the manner in which it attained tax-exempt status. If a subordinate organization not included on the list fails to file its own information return or submit an annual electronic notice for three consecutive years, it is revoked by operation of section 6033(j)(1). Once an organization's tax-exempt status is revoked by operation of law pursuant to section 6033(j)(1), section 6033(j)(2) states that:

Any organization the tax-exempt status of which is revoked under paragraph (1) must apply in order to obtain reinstatement of such status regardless of whether such organization was originally required to make such an application.

The Technical Explanation of H.R. 4, The “Pension Protection Act of 2006,” as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006 at 326. JCX-38-06 (August 3, 2006) also provides:

A revocation under the provision [IRC § 6033(j)(1)] is effective from the date that the Secretary determines was the last day the organization could have timely filed the third required information return or notice. To again be recognized as tax-exempt, the organization must apply to the Secretary for recognition of tax-exemption, irrespective of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax-exemption originally.

Section 6033(j)(3) further provides that

If, upon application for reinstatement of status as an organization exempt from tax under section 501(a), an organization described in paragraph (1) can show to the satisfaction of the Secretary evidence of reasonable cause for the failure described in such paragraph, the organization's exempt status may, in the discretion of the Secretary, be reinstated effective from the date of revocation under such paragraph.

Discussion

As you have noted in your memorandum, a group exemption letter does not change the requirements for the filing of information returns for exempt organizations. In fact, the continued effectiveness of a group exemption as to a particular subordinate is conditioned in part upon the annual filing of an information return under section 6033(a)(1) or the submission of an annual electronic notice under section 6033(i)(1). The central organization may file a group return on behalf of some or all of its subordinates. However, subordinates not included on the group return are required to file their own information return or submit an annual electronic notice. If a subordinate organization not included on the group return fails to file its own information return or submit an annual electronic notice for three consecutive years, it is revoked by operation of law pursuant to section 6033(j)(1).

We agree with your conclusion that in order to again be recognized as tax-exempt, a subordinate organization covered by a group ruling letter that has its tax-exempt status revoked under section 6033(j)(1) must apply in order to obtain reinstatement in a manner that is determined by the IRS. This may occur through the filing of an application with the IRS so that the IRS may make a determination as to whether the subordinate organization should be granted recognition of tax-exempt status. The listing by a central organization of a revoked subordinate on the central organization's annual Supplemental Group Ruling Information filing does not reinstate the revoked tax-exempt status of a subordinate organization as required by section 6033(j)(2). If a revoked subordinate were permitted to have its tax-exempt status reinstated by a central organization, this would contradict section 6033(j)(2) which provides that any organization which is revoked for failure to provide required information (either by electronic notice or information return) must apply in order to obtain reinstatement of such status regardless of whether such organization was originally required to make such an application. See also, Technical Explanation of H.R. 4, The "Pension Protection Act of 2006," as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006 at 326. JCX-38-06 (August 3, 2006). In addition, under section 6033(j)(3), an organization's tax-exempt status may be retroactively reinstated to the date of revocation, at the discretion of the Secretary, if the organization shows reasonable cause for the failure to file an information return or submit an

electronic notice “upon application for reinstatement of status as an organization exempt from tax under section 501(a).”

Please call me if you have any additional questions regarding this matter.